

Department of State

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§ 96.14 Providing adoption services using other providers.

(a) Accreditation, temporary accreditation, and approval under this part require that, in each Convention adoption case, an accredited agency, a temporarily accredited agency, or an approved person will be identified and act as the primary provider. If one accredited agency, temporarily accredited agency, or approved person is providing all adoption services by itself, it must act as the primary provider. If just one accredited agency, temporarily accredited agency, or approved person is involved in providing adoption services, the sole accredited agency, temporarily accredited agency, or approved person must act as the primary provider. If adoption services in the Convention case are being provided by more than one accredited agency, temporarily accredited agency, or approved person, the agency or person that has child placement responsibility, as evidenced by the following, must act as the primary provider throughout the case:

(1) Entering into placement contracts with prospective adoptive parent(s) to provide child referral and placement;

(2) Accepting custody from a birth parent or other legal custodian in a Convention country for the purpose of placement for adoption;

(3) Assuming responsibility for liaison with a Convention country's Central Authority or its designees with regard to arranging an adoption; or

(4) Receiving from or sending to a Convention country information about a child that is under consideration for adoption, unless acting as a local service provider that conveys such information to parent(s) on behalf of the primary provider.

(b) Pursuant to § 96.44, in the case of accredited agencies or approved persons, and § 96.104(g), in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in the United States:

(1) A supervised provider, including an accredited agency, temporarily accredited agency, or approved person;

(2) An exempted provider, if the exempted provider's home study or child background study will be reviewed and

approved by an accredited agency or temporarily accredited agency pursuant to § 96.47(c) or § 96.53(b); or

(3) A public domestic authority.

(c) Pursuant to § 96.44 of subpart F, in the case of accredited agencies or approved persons, and § 96.104(g) of subpart N, in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in a Convention country:

(1) A Central Authority, competent authority, or a public foreign authority;

(2) A foreign supervised provider, including a provider accredited by the Convention country; or

(3) A foreign provider (agency, person, or other non-governmental entity) who

(i) Has secured or is securing the necessary consent to termination of parental rights and to adoption, if the primary provider verifies consent pursuant to § 96.46(c); or

(ii) Has prepared or is preparing a background study on a child in a case involving immigration to the United States (incoming case) or a home study on prospective adoptive parent(s) in a case involving emigration from the United States (outgoing case), and a report on the results of such a study, if the primary provider verifies the study and report pursuant to § 96.46(c).

(d) The primary provider is not required to provide supervision or to assume responsibility for:

(1) Public domestic authorities; or

(2) Central Authorities, competent authorities, and public foreign authorities.

(e) The primary provider must adhere to the standards contained in § 96.45 (Using supervised providers in the United States) when using supervised providers in the United States and the applicable standards contained in § 96.46 (Using providers in Convention countries) when using providers outside the United States.

§ 96.15 Examples.

The following examples illustrate the rules of §§ 96.12 to 96.14:

Example 1. Identifying a child for adoption and arranging an adoption. Agency X identifies children eligible for adoption in the

United States on a TV program in an effort to recruit prospective adoptive parent(s). A couple in a Convention country calls Agency X about one of the children. Agency X refers them to an agency or person in the United States who arranges intercountry adoptions. Agency X does not require accreditation, temporarily accreditation, approval or supervision because it is not both identifying and arranging the adoption. In contrast, Agency Y, located in the United States, provides information about children eligible for adoption in a Convention country on a website and then arranges for interested U.S. parents to adopt those children. Agency Y must be accredited, temporarily accredited, approved, or supervised because, in addition to identifying children eligible for adoption, it is also helping to arrange the adoption.

Example 2. Child welfare services exemption. Doctor X evaluates the medical records and a video of Child Y. The evaluation will be used in a Convention adoption as part of the placement of Child Y and is the only service that Doctor X provides in the United States with regard to Child Y's adoption. Doctor X (not employed with an accredited agency or approved person) does not need to be approved or supervised because she is not providing an adoption service as defined in § 96.2.

Example 3. Home study exemption. Social Worker X, in the United States, (not employed with an accredited agency or approved person) interviews Prospective Adoptive Parent Y, obtains a criminal background study, and checks the references of Prospective Adoptive Parent Y, then composes a report and submits the report to an accredited agency for use in a Convention adoption. Social Worker X does not provide any other services to Prospective Adoptive Parent Y. Social Worker X qualifies as an exempted provider and therefore need not be approved or operate as supervised provider. In contrast, Social Worker Z, in the United States, (not employed with an accredited agency or approved person) prepares a home study report for Prospective Adoptive Parent(s) W, and in addition re-enters the house after Child V has been placed with Prospective Adoptive Parent(s) W to assess how V and W are adjusting to life as a family. This assessment is post-placement monitoring, which is an adoption service. Therefore, Social Worker Z would need to become approved before providing this assessment for this Convention adoption or else operate as a supervised provider. If an agency or person provides an adoption service in addition to a home study or child background study, the agency or person needs to become accredited, temporarily accredited, approved, or supervised before providing that adoption service.

Example 4. Child background study exemption. An employee of Agency X interviews

Child Y in the United States and compiles a report concerning Child Y's social and developmental history for use in a Convention adoption. Agency X provides no other adoption services on behalf of Child Y. Agency X does not need to be accredited, temporarily accredited, approved, or supervised. Agency X is only conducting and creating a child background study, and therefore is an exempted provider. In contrast, an employee of Agency Z interviews Child W in the United States and creates a child background study for use in a Convention adoption. Agency Z subsequently identifies prospective adoptive parent(s) and arranges a new adoption when Child W's previous adoption becomes disrupted. Agency Z needs to be accredited, temporarily accredited, approved, or supervised before providing this service. If an agency or person provides an adoption service in addition to a child background study or home study, the agency or person needs to be accredited, temporarily accredited, approved, or supervised before providing the additional service.

Example 5. Home study and child welfare services exemptions. Agency X interviews Prospective Adoptive Parent Y, obtains a criminal background check, checks the references of Prospective Adoptive Parent Y, then composes a home study and submits it to an accredited agency for use in a Convention adoption in the United States. Parent Y later joins a post-adoption support group for adoptive parents sponsored by Agency X. If Agency X performs no other adoption services, Agency X does not need to be accredited, temporarily accredited, approved, or supervised. If an agency or person provides a home study or child background study as well as other services in the United States that do not require accreditation, temporary accreditation, approval, or supervision, and no other adoption services, the agency or person is an exempted provider.

Example 6. Exempted provider. Agency X interviews Prospective Adoptive Parent(s) Y, obtains a criminal background check, checks the references of Prospective Adoptive Parent(s) Y, and then composes a home study and submits the report to an accredited agency. In addition, Agency X interviews Child Z and compiles a report concerning Child Z's social and developmental history. All of Agency X's work is done in the United States. Both reports will be used in a Convention adoption. If Agency X performs no other adoption services, Agency X does not need to be accredited, temporarily accredited, approved, or supervised. If an agency or person provides a home study and child background study as well as other services that do not require accreditation, temporary accreditation, approval or supervision, and no other adoption services, the agency or person is an exempted provider.

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Example 7. Legal services exemption. Attorney X (not employed with an accredited agency or approved person) provides advice and counsel to Prospective Adoptive Parent(s) Y on filling out DHS paperwork required for a Convention adoption. Among other papers, Attorney X prepares an affidavit of consent to termination of parental rights and to adoption of Child W to be signed by the birth mother in the United States. Attorney X must be approved or supervised because securing consent to termination of parental rights is an adoption service. In contrast, Attorney Z (not employed with an accredited agency or approved person) assists Adoptive Parent(s) T to complete an adoption in the State in which they reside, after they have been granted an adoption in Child V's Convention country of origin. Attorney Z is exempt from approval or supervision because she is providing legal services, but no adoption services.

Example 8. Post-placement monitoring. A court in a Convention country has granted custody of Child W to Prospective Adoptive Parent(s) Y pending the completion of W's adoption. Agency X interviews both Prospective Adoptive Parent(s) Y and Child W in their home in the United States. Agency X gathers information on the adjustment of Child W as a member of the family and inquires into the social and educational progress of Child W. Agency X must be accredited, temporarily accredited, approved, or supervised. Agency X's activities constitute post-placement monitoring, which is an adoption service. In contrast, if Person Z provided counseling for Prospective Adoptive Parent(s) Y and/or Child W, but provided no adoption services in the United States to the family, Person Z would not need to be approved or supervised. Post-placement counseling is different than post-placement monitoring because it does not relate to evaluating the adoption placement. Post-placement counseling is not an adoption service and does not trigger the accreditation/approval requirements of the IAA and this part.

Example 9. Post-adoption services. Convention Country H requires that post-adoption reports be completed and sent to its Central Authority every year until adopted children reach the age of 18. Agency X provides support groups and a newsletter for U.S. parents that have adopted children from Country H and encourages parents to complete their post-adoption reports annually. Agency X does not need to be accredited, temporarily accredited, approved, or supervised because it is providing only post-adoption services. Post-adoption services are not included in the definition of adoption services, and therefore, do not trigger accreditation/approval requirements of the IAA and this part.

Example 10. Assuming custody and providing services after a disruption. Agency X provides counseling for Prospective Adoptive Parent(s) Y and for Child W pending the completion of Child W's Convention adoption. The adoption is eventually disrupted. Agency X helps recruit and identify new prospective adoptive parent(s) for Child W, but it is Agency P that assumes custody of Child W and places him in foster care until an alternative adoptive placement can be found. Agency X is not required to be accredited, temporarily accredited, approved, or supervised because it is not providing an adoption service in the United States as defined in § 96.2. Agency P, on the other hand, is providing an adoption service and would have to be accredited, temporarily accredited, approved, or supervised.

Example 11. Making non-judicial determinations of best interest of child and appropriateness of adoptive placement of child. Agency X receives information about and a videotape of Child W from the institution where Child W lives in a Convention country. Based on the age, sex, and health problems of Child W, Agency X matches Prospective Adoptive Parent(s) Y with Child W. Prospective Adoptive Parent(s) Y receive a referral from Agency X and agree to accept the referral and proceed with the adoption of Child W. Agency X determines that Prospective Adoptive Parent(s) Y are a good placement for Child W and notifies the competent authority in W's country of origin that it has found a match for Child W and will start preparing adoption paperwork. All of Agency X's services are provided in the United States. Agency X is performing an adoption service and must be accredited, temporarily accredited, approved, or supervised.

Example 12. Securing necessary consent to termination of parental rights and to adoption. Facilitator Y is accredited by Convention Country Z. He has contacts at several orphanages in Convention Country Z and helps Agency X match children eligible for adoption with prospective adoptive parent(s) in the United States. Facilitator Y works with the institution that is the legal guardian of Child W in order to get the documents showing the institution's legal consent to the adoption of Child W. Agency X is the only U.S. agency providing adoption services in the case. Agency X must be accredited, temporarily accredited, or approved and must either treat Facilitator Y as a foreign supervised provider in accordance with § 96.46(a) and (b) or verify the consents Facilitator Y secured, in accordance with § 96.46(c).

§ 96.16 Public domestic authorities.

Public domestic authorities are not required to become accredited to be able to provide adoption services in